

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to securities and providing an opportunity for public comment

The Insurance Division hereby proposes to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 502.605.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 502.

Purpose and Summary

These amendments implement Iowa Code chapter 502, the Iowa Uniform Securities Act, which regulates the sale of securities in Iowa. The amendments do the following:

- Amend the filing procedures for an investment adviser’s business continuity and succession plan from license applications to an examination procedure under Iowa Code section 502.411(4).
- Adopt the model rule of the North American Securities Administrators Association (NASAA) regarding merger and acquisition brokers.
- Adopt provisions regarding intrastate crowdfunding offerings.
- Conform to the implementation by the Financial Industry Regulatory Authority (FINRA) of the Securities Industry Essentials Exam.
- Mandate use of NASAA’s electronic filing depository (EFD) system for unit investment trust notice filings by a person who is the issuer of a federal covered security under Section 18(b)(2) of the Securities Act of 1933.

The Division intends that these rule-making actions shall go into effect May 16, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Insurance Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Craig Goettsch
Insurance Division
Two Ruan Center
601 Locust, Fourth Floor
Des Moines, Iowa 50309
Fax: 515.281.3059
Email: craig.goettsch@iid.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 6, 2018
10:30 a.m.

Insurance Division Offices
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 50.10(10):

50.10(10) Registration exemption for merger and acquisition brokers.

a. Definitions. For purposes of rule 191—50.10(502), in addition to the definitions set forth in rule 191—50.1(502), the following definitions apply:

(1) “*Control*” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. There is a presumption of control for any person who meets at least one of the following conditions:

1. Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or similar status or functions).

2. Has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities.

3. In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(2) “*Eligible privately held company*” means a company that meets both of the following conditions:

1. The company does not have any class of securities:

- Registered, or required to be registered, pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781); or

- For which the company files, or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)).

2. In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

- The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25 million.

- The gross revenues of the company are less than \$250 million.

(3) “*Merger and acquisition broker*” means any broker-dealer and any person that is associated with a broker-dealer:

1. That is engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company; and

- That is thus engaged regardless of whether that broker-dealer acts on behalf of a seller or buyer; and

- That is thus engaged through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company; and

2. That meets both of the following conditions:

- The broker-dealer reasonably believes that, upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

- If any person offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to both of the following:

- o The most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations; and

- o If the financial statements of the issuer are audited, reviewed or compiled, all of the following:

- ♦ Any related statement by the independent accountant;

- ♦ A balance sheet dated not more than 120 days before the date of the exchange offer;

- ♦ Information pertaining to the management, business, and results of operations for the period covered by the foregoing financial statements; and

- ♦ Any material loss contingencies of the issuer.

(4) “*Public shell company*” means a company that, at the time of a transaction with an eligible privately held company, meets all three of the following conditions:

1. Has any class of securities registered, or required to be registered, with the SEC pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or with respect to which the company files, or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

2. Has no or nominal operations.

3. Has assets consisting of one of the following:

- No or nominal assets.

- Cash and cash equivalents.

- Any amount of cash and cash equivalents and nominal other assets.

b. *Merger and acquisition broker exemption from registration requirements.*

(1) Exemption. Except as provided in subparagraphs 50.10(10)“b”(2) and (3), a merger and acquisition broker is exempt from the broker-dealer registration requirements and procedures of Iowa Code sections 502.401 and 502.406.

(2) Activities not exempt. A merger and acquisition broker is not exempt from the broker-dealer registration requirements of Iowa Code sections 502.401 and 502.406 if the merger and acquisition broker does any of the following:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. Section 781) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)).

3. Engages on behalf of any party in a transaction involving a public shell company.

(3) Disqualifications. A merger and acquisition broker is not exempt from registration under this subrule if the merger and acquisition broker is subject to any of the following:

1. Suspension or revocation of registration under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4));

2. A statutory disqualification described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(39));

3. A disqualification under the rules adopted by the SEC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. Section 77d note)); or

4. A final order described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4)(H)).

(4) Rule of construction. Nothing in this subrule shall be construed to limit any other authority of the administrator to exempt any person, or any class of persons, from Iowa Code chapter 502 or from any provision of this chapter.

c. *Inflation adjustment.* On July 1, 2023, and every five years thereafter, each dollar amount in 50.10(10)“a”(2)“2” shall be adjusted by the following calculation, and the dollar amount determined under the calculation shall be rounded to the nearest multiple of \$100,000:

(1) Dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor index) for the calendar year ending December 31, 2017; and

(2) Multiplying the dollar amount in 50.10(10)“a”(2)“2” by the quotient obtained under subparagraph 50.10(10)“c”(1), above.

ITEM 2. Amend paragraph **50.12(1)“b”** as follows:

b. Pass the appropriate qualifying examination administered by ~~the Financial Industry National Regulatory Authority (FINRA)~~ FINRA. In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;

ITEM 3. Amend subrule 50.33(1) as follows:

50.33(1) Except as exempted by subrule 50.33(2), a person applying to be registered as an investment adviser representative shall provide the administrator with proof that the person has obtained ~~a passing score on one of the following examinations~~ either:

a. ~~The A passing score on the Series 65 examination as implemented January 1, 2000; or~~

b. ~~The Passing scores on both the Series 7 examination and the Series 66 examination as implemented January 1, 2000 and, if the application is received by the administrator on or after October 1, 2018, FINRA's Securities Industry Essentials Exam.~~ In the event that an applicant for registration as an investment adviser representative has received a waiver by FINRA of the Series 7 examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement.

ITEM 4. Amend paragraph **50.39(4)“c”** as follows:

c. *“Independent certified public accountant”* means a certified public accountant that meets the standards of independence described in SEC Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

ITEM 5. Adopt the following **new** paragraph **50.42(1)“x”**:

x. A copy of a written business continuity and succession plan as required by rule 191—50.47(502).

ITEM 6. Amend subrule 50.42(9) as follows:

50.42(9) Compliance with any substantially similar record-keeping requirements of ~~Rules 17a-3 [17 CFR 240.17a-3] and 17a-4 [17 CFR 240.17a-4] of the Securities Exchange Act of 1934 SEC Rules 17a-3 and 17a-4 (17 CFR 240.17a-3 and 17 CFR 240.17a-4)~~ shall be deemed to be in compliance with this rule.

ITEM 7. Amend rule 191—50.45(502) as follows:

191—50.45(502) Registration exemption for investment advisers to private funds.

50.45(1) Definitions. For purposes of this rule, the following definitions shall apply:

“*3(c)(1) fund*” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under ~~Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1)~~ 1940 (15 U.S.C. Section 80a-3(c)(1)).

“*Private fund adviser*” means an investment adviser who provides advice solely to one or more qualifying private funds.

“*Qualifying private fund*” means a private fund that meets the definition of a qualifying private fund in SEC Rule ~~203(m)-1, 17 CFR § 275.203(m)-1~~ 203(m)-1 (17 CFR 275.203(m)-1).

“*Value of primary residence*” means the fair market value of a person’s primary residence, less the amount of debt secured by the property up to its fair market value.

“*Venture capital fund*” means a private fund that meets the definition of a venture capital fund in SEC Rule ~~203(l)-1, 17 CFR § 275.203(l)-1~~ 203(l)-1 (17 CFR 275.203(l)-1).

50.45(2) Exemption for private fund advisers. Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 if the private fund adviser satisfies each of the following conditions:

a. Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in SEC Rule 262 of SEC Regulation A, ~~17 CFR § 230.262; A (17 CFR 230.262).~~

b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule ~~204-4, 17 CFR § 275.204-4; 204-4 (17 CFR 275.204-4).~~

c. No change.

50.45(3) Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3)“b,” comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person’s net worth, would each meet the definition of a qualified client in SEC Rule ~~205-3, 17 CFR § 275.205-3, 205-3 (17 CFR 275.205-3)~~ at the time the securities are purchased from the issuer.

b. and c. No change.

50.45(4) to 50.45(8) No change.

This rule is intended to implement Iowa Code section 502.403.

ITEM 8. Amend subrule 50.47(1) as follows:

50.47(1) On and after July 1, 2017, every investment adviser registered in Iowa shall ~~establish, implement, and maintain~~ make and maintain records, pursuant to Iowa Code section 502.411(3)“a,” of the establishment, implementation and maintenance of a written business continuity and succession plan. The business continuity and succession plan shall be created and implemented in a manner consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers, which is available on the Iowa insurance division’s Web site, www.iid.iowa.gov website, iid.iowa.gov. In developing the procedures for the business continuity and succession plan,

the investment adviser shall consider, among other things, the size of the firm, the types of services provided and the number of locations of the investment adviser. The business continuity and succession plan shall provide for, at a minimum, all of the following:

a. to e. No change.

ITEM 9. Amend subrule 50.47(2) as follows:

50.47(2) Every investment adviser registered in Iowa shall ~~include a copy of~~ annually review the investment adviser's written business continuity and succession plan ~~with the first registration renewal required by Iowa Code section 502.402 that the investment adviser files on and after July 1, 2017 and, if it has been changed since it was submitted, or if it was not previously submitted, shall file it for examination by the administrator, pursuant to Iowa Code section 502.411(4).~~ The administrator shall review an investment adviser's written business continuity and succession plan to determine whether it is consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers and whether it takes into account the considerations listed in subrule 50.47(1). The administrator may request the investment adviser to modify the filed business continuity and succession plan according to the administrator's suggestions. After the initial filing, the investment adviser shall submit to the administrator adviser's filing of any change shall identify any substantive amendment to the business continuity and succession plan with the registration renewal following the amendment. The administrator may request from the investment adviser at any time information regarding the business continuity and succession plan, including but not limited to evidence that it has been implemented and maintained made since the last filing of the plan.

ITEM 10. Adopt the following **new** subrule 50.60(7):

50.60(7) Effective January 1, 2019, when notice filings of the records and fees are required by this rule for the offer or sale of unit investment trusts (as defined in the Investment Company Act of 1940 (15 U.S.C. Section 80a-4(2)), the filings shall be submitted electronically through NASAA's electronic filing depository system at efdnasaa.org.

ITEM 11. Rescind and reserve rule **191—50.80(502)**.

ITEM 12. Amend rule 191—50.81(502) as follows:

191—50.81(502) Notice filings for Rule 506 offerings. An issuer offering a security that is a covered security pursuant to Section ~~18(b)(4)(E)~~ 18(b)(4)(F) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa an electronic filing and fees through www.efdnasaa.org, under "filers and issuers."

This rule is intended to implement Iowa Code section 502.302(3).

ITEM 13. Rescind rule 191—50.90(502) and adopt the following **new** rule in lieu thereof:

191—50.90(502) Intrastate crowdfunding exemption.

50.90(1) Definitions. For purposes of this rule, in addition to the definitions set forth in rule 191—50.1(502), the definitions in Iowa Code section 502.202(24) "a" and the following definitions apply:

"*Administrator's website*" means the Internet site of the Iowa Insurance Division, iid.iowa.gov.

"*Escrow agent*" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, or any other independent escrow agent acceptable to the commissioner.

"*Issuer*" means a person that is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to subrule 50.90(5).

"*Management*" means an issuer's directors, executive officers, or the individuals who perform such functions for the issuer.

"*Portal website*" means the Internet site through which a registered Iowa crowdfunding portal conducts offers and sales of exempt securities under Iowa Code section 502.202(24).

“Principal place of business” means the state or territory from which the officers, partners, or managers of a corporation, partnership, limited liability company, trust or other form of business primarily direct, control and coordinate the activities of the business. “Principal place of business” is not related to “place of business” as defined in Iowa Code section 502.102(21).

50.90(2) Exemption from registration.

a. Under the authority delegated to the administrator to promulgate rules in Iowa Code sections 502.203 and 502.605(1), a transaction is exempt from the registration provisions of the Act if all of the conditions in subparagraphs (1) to (4) are met:

(1) The issuer of the securities is at the time of any offers and sales a person that is a resident and doing business within the state of Iowa. The issuer shall be deemed to be a resident of the state of Iowa if it has its principal place of business in Iowa. The issuer shall be deemed to be doing business within Iowa if the issuer satisfies at least one of the following requirements:

1. The issuer derived at least 80 percent of its consolidated gross revenues from the operation of a business or of real property located in or from the rendering of services within the state of Iowa.

2. The issuer had, at the end of its most recent semiannual fiscal year prior to an initial offer of securities in any offering or subsequent offering pursuant to this rule, at least 80 percent of its assets and those of its subsidiaries on a consolidated basis located in the state of Iowa.

3. The issuer intends to use and uses at least 80 percent of the net proceeds to the issuer from sales made pursuant to this rule in connection with the operation of a business within, the operation of real property within, the purchase of real property located in, or the rendering of services within the state of Iowa.

4. A majority of the issuer’s employees are based in the state of Iowa.

(2) Sales of securities pursuant to this rule are made only to residents of the state of Iowa or who the issuer reasonably believes, at the time of the sale, are residents of the state of Iowa. Individuals shall be deemed to be residents of the state of Iowa if such individuals have, at the time of sale, their principal residence in the state of Iowa. A trust that is not deemed by Iowa law to be a separate legal entity is deemed a resident of the state of Iowa only if all of its trustees are residents of the state of Iowa. For purposes of determining the residence of purchasers:

1. A corporation, partnership, limited liability company, trust or other form of business organization shall be deemed a resident of the state of Iowa if, at the time of sale to it, it has its principal place of business within the state of Iowa.

2. A corporation, partnership, trust or other form of business organization that is organized for the specific purpose of acquiring securities offered pursuant to this rule shall not be a resident of Iowa unless all of the beneficial owners of such organization are residents of Iowa.

(3) The issuer is not, before or as a result of the offering, any of the following:

1. An investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

2. A hedge fund, commodity pool, or similar investment vehicle.

3. A development stage company that either has no specific business plan or purpose or has indicated that the company’s business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

4. A company with a class of securities registered under the federal Securities Exchange Act of 1934.

(4) The offering is sold in compliance with the requirements of SEC Rule 147A (17 CFR 230.147A).

b. All offers and sales of securities made in reliance upon this rule shall be made through an intermediary’s Internet site.

50.90(3) Integration.

a. Offers and sales made in reliance on this rule may be integrated with other offers and sales when the following factors apply:

(1) The sales are part of a single plan of financing;

(2) The sales involve the issuance of the same class of securities;

- (3) The sales have been made at or about the same time;
- (4) The same type of consideration is received; and
- (5) The sales are made for the same general purpose.

b. Offers and sales made in reliance on this rule shall not be integrated with offers and sales made more than six months before the start of the offering or more than six months after completion of an offering, so long as during those six-month periods there are no offers or sales of securities by or for the issuer that are of the same class or of a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

50.90(4) *Bad actor disqualification.*

a. The exemption of 50.90(2) shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such offer or sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such offer or sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer, or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor:

(1) Has been convicted, within ten years before such offer or sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor that is any of the following:

1. In connection with the purchase or sale of any security.
2. Involving any making of any false filing with the SEC or a state securities commission or agency or state official performing like functions.
3. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before such offer or sale that, at the time of such offer or sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice that is any of the following:

1. In connection with the purchase or sale of any security.
2. Involving the making of any false filing with the SEC or a state securities commission or agency or state official performing like functions.
3. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchaser of securities;

(3) Is subject to a final order of a state securities commission or agency or state official performing like functions; a state authority that supervises or examines banks, savings associations, or credit unions, a state insurance commission or agency or state official performing like functions; an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

1. At the time of such offer or sale, bars the person from:
 - Association with an entity regulated by such commission, authority, agency, or officer;
 - Engaging in the business of securities, insurance or banking; or
 - Engaging in savings association or credit union activities; or
2. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, including making untrue statements of material facts or omitting to state material facts, entered within ten years before such offer or sale;

(4) Is subject to an order of the SEC entered pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b) or 78o-4(c)) or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3(e) or (f)) that, at the time of such offer or sale:

1. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

2. Places limitations on the activities, functions or operations of such person; or
3. Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the SEC entered within five years before such offer or sale that, at the time of such offer or sale, orders the person to cease and desist from committing or causing a violation or future violations of:

1. Any scienter-based, antifraud provision of the federal securities laws, including without limitation the Securities Act of 1933 (15 U.S.C. Section 77q(a)(1)); the Securities Exchange Act of 1934 (15 U.S.C. Section 78j(b) and 17 CFR 240.10b-5); the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(c)(1)); the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-6(1)); or any other rule or regulation thereunder; or

2. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five years before such offer or sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such offer or sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;

(8) Is subject to a United States Postal Service false representation order entered within five years before such offer or sale, or is, at the time of such offer or sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;

(9) Has filed a registration statement which is subject to a final stop order entered under any state's securities law within five years before such offer or sale; or

(10) Is currently subject to any final state administrative enforcement order or judgment entered by a state's securities administrator within five years prior to such offer or sale.

b. Paragraph 50.90(4) "a" shall not apply under either of the following circumstances:

(1) Upon a showing of good cause and without prejudice to any other action by the commissioner, if the commissioner determines that it is not necessary under the circumstances that the exemption be denied; or

(2) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under this subrule. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

c. Events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

50.90(5) Filing requirements for issuers.

a. An issuer may declare an offering exempt for a maximum of 12 months and rely on this intrastate sales exemption if the issuer submits at the administrator's website, and receives approval from the administrator, at least 30 days prior to the offer of any security in reliance upon Iowa Code section 502.202(24), all of the following:

(1) A properly completed Iowa Crowdfunding Notice Filing Form (available at the administrator's website).

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized.

- (3) The issuer's bylaws or operating agreement and all amendments thereto.
- (4) A copy of any resolutions setting forth terms and provisions of the securities being issued.
- (5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles. If the date of the most recent fiscal year end is more than 90 days prior to the date of the filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations, both prepared in accordance with generally accepted accounting principles for the issuer's most recent fiscal year.
- (6) A copy of any agreements between the issuer and any intermediary.
- (7) A copy of any subscription agreement for the purchase of securities in the offering.
- (8) A copy of the escrow agreement between the issuer and an escrow agent for the deposit of offering proceeds.
- (9) A specimen or copy of the security to be offered, including required legends, if the issuer will issue physical certificates.
- (10) A copy of all advertising and other materials directed to or to be furnished to investors in the offering.
- (11) A copy of all disclosure documents directed to or to be furnished to investors in the offering.
- (12) Any other information reasonably requested by the commissioner.
- (13) A filing fee of \$100.

b. If an issuer will make offers and sales of an offering after the exempt offering period declared by the issuer on the Iowa Crowdfunding Notice Filing Form, the issuer must renew the offering exemption by submitting at the administrator's website, and receiving approval of the administrator, at least 30 days prior to the expiration of the original exempt offering period, all of the following:

- (1) A report of sales as of the most recent practical date that includes the following information:
 1. The time period in which the offering was open.
 2. The number of shares or units sold in the offering.
 3. The number of investors that purchased shares or units in the offering.
 4. The dollar amount sold in the offering.
- (2) A copy of the issuer's updated Iowa Crowdfunding Notice Filing Form.
- (3) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles. If the end date of the most recent fiscal year is more than 90 days prior to the date of renewal, the issuer also shall submit an unaudited balance sheet and an unaudited statement of income or operations, both prepared in accordance with generally accepted accounting principles for the issuer's most recent fiscal quarter.
- (4) A renewal filing fee of \$100.

c. Upon completion of an offering made in reliance upon this rule, an issuer shall file at the administrator's website, and receive the administrator's approval of, a final sales report that includes all of the following information:

- (1) The time period in which the offering was open.
- (2) The number of shares or units sold in the offering.
- (3) The number of investors that purchased shares or units in the offering.
- (4) The total dollar amount sold in the offering.

50.90(6) *Minimum offering amount.* The issuer shall establish a minimum offering amount that is sufficient, together with other sources of financing, to implement the business plan of the issuer, as disclosed in the submitted offering information.

50.90(7) *Escrow agreement.* The issuer must enter into an escrow agreement with an independent escrow agent to hold funds in an escrow account, and the escrow agreement shall include all of the following terms:

- a.* All offering proceeds shall be maintained in an account controlled by the escrow agent.
- b.* All offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers that have signed commitments to invest is equal to or greater than the minimum offering amount disclosed in the offering materials submitted to the administrator with the issuer's filing of paragraph 50.90(5) "a."

c. If the proceeds do not meet the minimum offering amount disclosed in the offering materials within one year of the earlier of the commencement of the offering or the first posting of the offering on the Internet, the issuer shall return all funds to investors.

d. None of the following shall have any claim to the escrowed proceeds:

- (1) A creditor of an escrow agent.
- (2) An affiliate of an escrow agent.
- (3) A creditor of the issuer.
- (4) An affiliate of the issuer.
- (5) A creditor of an intermediary engaged by the issuer.
- (6) An affiliate of an intermediary engaged by the issuer.

e. The escrow agent agrees to maintain its independence from the issuer, any intermediary or Iowa crowdfunding portal assisting with the offering, and the officers, directors, managing members, and affiliates of the issuer or any Iowa crowdfunding portal assisting with the offering.

f. The commissioner may inspect the records of the impound account maintained by the escrow agent at any reasonable time at the location of the records and copy any record.

g. The escrow agreement must be signed by an officer of the issuer and an authorized representative of the escrow agent.

h. The escrow agent may not be affiliated with the issuer, any Iowa crowdfunding portal assisting with the offering, or any officers, director, managing member, or affiliate of the issuer or any intermediary assisting with the offering.

i. If the minimum offering amount is not received by the end of the offering period, the proceeds shall be returned to the purchasers within 30 days.

j. All purchasers shall have the right to withdraw their investments, without deduction of any kind, until such time as offering proceeds totaling at least the minimum offering amount are received.

50.90(8) *Disclosure requirements for issuers.*

a. Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the requirements of rule 191—50.90(502) and the antifraud provisions of Iowa Code chapter 502. The issuer is required to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered. If eligible, the issuer may use Form U-7, which may be obtained from the NASAA website at www.nasaa.org.

b. Among other risk disclosures, the issuer must provide the substance of all of the following disclosures to all prospective purchasers and investors:

(1) There is no ready market for the sale of the securities acquired in this offering. It may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely.

(2) No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

(3) In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

(4) The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

50.90(9) *Books and records.* An issuer that has filed under this rule must keep and maintain written or electronic records relating to offers and sales of securities made in reliance upon this rule for at least six years following termination of the offering. These records are subject to such reasonable audits or inspections by the administrator or a representative of the administrator as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection.

50.90(10) *Iowa crowdfunding portal registration.*

a. To register as an Iowa crowdfunding portal, a person shall submit to the administrator at the administrator's website all of the following:

(1) A completed Iowa Crowdfunding Portal Registration Form, available on the administrator's website, including all required schedules and supplemental information.

(2) A completed Form U-4, available on the administrator's website, for each agent as defined in Iowa Code section 502.102(2).

(3) Any other information requested by the administrator to determine the financial responsibility, business reputation, or qualifications of the Iowa crowdfunding portal.

(4) The registration fee of \$100.

b. The person must receive approval of the submission and registration by the administrator before the person may operate as an Iowa crowdfunding portal.

c. Registration expires at the close of the calendar year in which a registration was issued, but the registration may be renewed for the succeeding year by submission to the administrator at the administrator's website of both a \$100 registration fee and a written request for renewal, including any material changes to the information submitted in the prior registration submission.

50.90(11) Duties of an Iowa crowdfunding intermediary.

a. *Maintenance of intermediary website.* An Iowa crowdfunding intermediary shall create and maintain the intermediary website and make information and services available on or through the intermediary website in compliance with this rule.

b. *Background and regulatory checks.* Prior to offering securities to residents of Iowa, the intermediary shall conduct a reasonable investigation of the background and history of each issuer whose securities are offered on the intermediary website and of each issuer's control persons. "Control persons" for the purpose of this subrule means the issuer's officers; directors; or other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The intermediary shall deny an issuer access to the intermediary website if there is a reasonable basis to believe that one or more of the following are true:

(1) The issuer or any of its control persons is subject to disqualification under subrule 50.90(3).

(2) The issuer has engaged in, the issuer is engaging in, or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person.

(3) The intermediary cannot adequately or effectively assess the risk of fraud by the issuer or by the issuer's potential offering.

c. *Purchaser screening.* Before a security is sold through the intermediary, the intermediary shall ensure that the purchaser does all of the following:

(1) Reviews the information provided in the offering documents.

(2) Provides to the intermediary an acknowledgment in writing from the purchaser that the purchaser received and acknowledged the disclosure statement provided to the purchaser by the issuer pursuant to subrule 50.90(8).

(3) Provides to the intermediary an affirmative representation that the purchaser is an Iowa resident.

d. *Information about the issuer and the offering.* The intermediary shall make available on the intermediary website information about the issuer and the offering. The information shall include all of the following:

(1) A copy of the disclosure statement required by subrule 50.90(8).

(2) A summary of the offering, including all of the following:

1. A description of the entity; its form of business, principal office, history, and business plan; and its intended use of offering proceeds, including compensation paid to any owner, executive officer, director, or manager.

2. The identity of the executive officers, directors, and managers, including their titles and their prior experience and the identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company.

3. A description of the securities being offered and any outstanding securities of the company, the amount of the offering, and the percentage of ownership of the company represented by the offered securities.

e. Intermediary website forum. The intermediary shall maintain a forum on the intermediary website. The forum shall be available to all potential purchasers as well as to the administrator. The intermediary website shall contain a disclaimer that reflects that access to securities offered on the intermediary website is limited to Iowa residents and that sales of the securities appearing on the intermediary website are limited to persons that are Iowa residents. Potential purchasers may ask questions and receive answers concerning the terms and conditions of the offering and may obtain additional information which the crowdfunding issuer possesses or can acquire without unreasonable effort or expense necessary to verify the accuracy of or to clarify the information provided on the intermediary website.

f. Enforcement of limits. The intermediary shall take reasonable measures to ensure that no purchaser exceeds the limits set forth in Iowa Code section 502.202(24) “c” and “d.”

g. Administrator access. The intermediary shall provide the administrator purchaser-level access at all times to the intermediary website, pursuant to Iowa Code section 502.202(24) “g”(8).

50.90(12) Prohibited conduct for intermediaries. An intermediary and individuals of the intermediary’s management:

a. Shall not have ownership or other financial interest greater than 20 percent in the crowdfunding issuer.

b. Shall not hold, manage, possess, or otherwise handle purchaser funds. Proceeds are to be held in escrow until the minimum impound amount has been met.

c. Shall not compensate employees, agents or other persons not registered with the administrator for soliciting offers or sales of securities displayed or referenced on the intermediary website.

50.90(13) Commissions, fees or other remuneration. Commissions, fees or other remuneration for soliciting any prospective purchaser in connection with the offering shall only be paid to intermediaries or any other persons who are appropriately registered or licensed with the commissioner.

50.90(14) Advertising and communications.

a. Advertising. The crowdfunding issuer shall not advertise the specific details of the offering, except for notices which direct potential purchasers to the intermediary website. Notwithstanding the foregoing, the issuer may distribute a notice within Iowa that the issuer is conducting an offering of securities, the name of the intermediary through which the offering is being conducted, and a link directing the potential investor to the intermediary. The notice shall contain a disclaimer that the sale of the security is limited to persons who are Iowa residents.

b. Communications. All communications between the issuer and potential purchasers taking place pursuant to Iowa Code section 502.202(24) shall occur through the intermediary website of the intermediary. During the time the securities are being offered on the intermediary website, the intermediary shall, pursuant to paragraphs 50.90(11) “d” and “e,” provide channels through which potential purchasers can communicate with one another and with the issuer about the securities being offered. These communications shall be visible to all those with access to the intermediary website.

(1) An issuer shall respond within ten days to requests for information made by potential purchasers or by the administrator through the intermediary website.

(2) If such additional information is material and not previously included on the intermediary website, the crowdfunding issuer and the Iowa crowdfunding portal shall immediately amend the information contained on the intermediary website.

50.90(15) Offering price. The offering price of the securities offered and sold pursuant to this exemption shall be the same for all purchasers and shall not be increased during the offering period. The offering price may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.

50.90(16) Resale of securities. On the document that is to serve as evidence of ownership, the issuer shall place a prominent notice which states that the securities have not been registered and which sets

forth limitations on resale contained in SEC Rule 147A(e) (17 CFR 230.147A(e)), including that, for a period of six months from the date of last sale by the issuer of the securities in the offering, resale by any person shall be made only to Iowa residents.

This rule is intended to implement Iowa Code section 502.202.